

UNITED STATES DISTRICT COURT

**ORIGINAL**

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

SOCIÉTÉ DU FIGARO, SAS, a	)	<b>Case Management Conference</b>
French simplified joint-	)	
stock company, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	NO. C 22-04437 YGR
	)	
APPLE INC., a California	)	Pages 1 - 7
corporation,	)	
	)	
Defendant.	)	Oakland, California
	)	Monday, November 7, 2022

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**REPORTER'S TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS**

**APPEARANCES VIA ZOOM WEBINAR:**

For Plaintiffs:	Hagens Berman Sobol Shapiro LLP 1301 Second Avenue, Suite 2000 Seattle, Washington 98101
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Reported By: Raynee H. Mercado, CSR No. 8258

Proceedings reported by electronic/mechanical stenography;  
transcript produced by computer-aided transcription.

Monday, November 7, 2022

2:17 p.m.

P R O C E E D I N G S

(Zoom Webinar)

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**THE CLERK:** Now calling civil case 22-4437-YGR,  
Société du Figaro versus Apple, Inc.

Counsel, starting with the plaintiff, please state your  
appearance for the record.

**MR. BERMAN:** Good afternoon, Your Honor. Steve  
Berman.

**MR. LOPEZ:** And Rob Lopez as well for the plaintiffs.

**MS. RICHMAN:** Cindy Richman for Apple.

**MS. HIGNEY:** Good afternoon, Your Honor. Caeli  
Higney for Apple.

**THE COURT:** Okay. Good afternoon.

So we have -- right? Don't we already have a motion to  
dismiss that is getting -- in the process of briefing?

**MR. BERMAN:** Yes, Your Honor. There's been a motion  
filed, and we're going to elect on our option to amend as of  
right, and so we're planning on amending by December 2nd.

**THE COURT:** Okay. And you've made that decision,  
Mr. Berman?

**MR. BERMAN:** We have, Your Honor.

**THE COURT:** Okay. All right. That's good to know.

I won't preview the motion, not that I would have anyway,

1 but it's good to know that we will then probably do motion  
2 practice sometime thereafter. If you file by right, what  
3 does -- what does the code give you in terms, Ms. Richman, of  
4 a response date?

5 **MS. RICHMAN:** Your Honor, we have started talking to  
6 the plaintiff about a possible negotiated schedule for an  
7 amended complaint -- motion to dismiss the amended complaint.  
8 And I think the plaintiffs had put forth the date of  
9 January 10th in their proposed schedule.

10 **THE COURT:** Okay. Ms. Richman, you sound like you're  
11 in a tunnel.

12 **MS. RICHMAN:** You are crystal clear. I'm sorry to  
13 hear that. Is this better if I'm closer to the speaker?

14 **THE COURT:** It's a little bit better, yes.

15 Okay. So I'm looking at your Exhibit A to your statement.  
16 And it looks like you've agreed on a January 10th response  
17 date? Or is there something else going on?

18 **MS. RICHMAN:** Your Honor, there is something else  
19 going on. We haven't yet agreed to that date. That is the  
20 date that the plaintiffs had proposed. Apple would propose  
21 January 20th in order to bring the time allotted for  
22 opposition in line with plaintiff's proposed time for their  
23 opposition which is 49 days after the January 10th date.

24 So we would propose a January 20th deadline for our motion  
25 to dismiss an amended complaint.

1 Also, the holidays are intervening and Apple is shut down  
2 for two weeks. So we would ask for a --

3 (Audio distortion.)

4 **MS. RICHMAN:** -- for that reason as well.

5 **THE COURT:** Mr. Berman, any objection to  
6 January 20th?

7 **MR. BERMAN:** No objection.

8 **THE COURT:** Okay. So motion to dismiss then is due  
9 on January 20th. Are we doing this on 35 days' notice?

10 **MS. RICHMAN:** (Nods head.) Yes, Your Honor.

11 **THE COURT:** So is that fine with you? Two weeks for  
12 opposition, one week for reply?

13 **MR. BERMAN:** I think we'd like a little more than two  
14 weeks. How about three weeks, Your Honor?

15 **THE COURT:** All right. So three weeks would be  
16 February 10th for an opposition.

17 And then, Ms. Richman, one week for reply?

18 **MS. RICHMAN:** We'd be grateful for two weeks, Your  
19 Honor, if the plaintiffs have no objection.

20 **MR. BERMAN:** No objection.

21 **THE COURT:** February 24th, then, for a reply.

22 We'll put you in for March 14th for a hearing.

23 Okay. So then with respect to the balance, it looks like  
24 you've all agreed on some discovery to be produced; is that  
25 right? While we're doing -- while we're doing this? I mean

1 Mr. Berman probably has it anyway. Or is -- what's happening  
2 on the discovery front?

3 **MS. RICHMAN:** Your Honor, Apple had proposed  
4 producing transactional data to the plaintiffs as quickly as  
5 possible, including transactional data that is updated through  
6 April 26, 2022, which is the set of data that we produced to  
7 the techno plaintiffs.

8 We would be amenable to reproducing everything that's been  
9 already produced in the related cases but believe -- strongly  
10 believe that discovery should otherwise be stayed until after  
11 resolution of the motion to dismiss.

12 **THE COURT:** Mr. Berman.

13 **MR. BERMAN:** We don't agree that there should be a  
14 stay, Your Honor. In particular, there's some discovery that  
15 we might want to do directed toward their motion that this  
16 case is barred by the Foreign Antitrust Immunity Act.

17 And in particular, we would be seeking information about  
18 the nature and extent to which foreign developers like our  
19 clients actually are controlled by decisions made here in the  
20 U.S. by Apple, and that the actual sale at issue here is the  
21 sale of distribution services to our clients that occurs here  
22 in the U.S., which would make this not subject to dismissal  
23 under the Foreign Antitrust Immunity Act, in our view.

24 So we would plan on serving some discovery.

25 **THE COURT:** All right. So this is -- this is what's

1 going to happen then. I don't agree that it should be  
2 full-blown discovery. It seems to me, Mr. Berman, since you  
3 already have the discovery from the *Cameron* case, that you and  
4 Ms. Richman could probably agree on some stipulation so that  
5 we're not wasting time and effort to reproduce everything.  
6 And -- and I would encourage you to do that just for  
7 efficiency purposes.

8 Two, you can issue very narrow discovery solely with  
9 respect to any issue that's -- that's being briefed on  
10 these -- or which you anticipate being briefed on the motion  
11 to dismiss. To the extent that there are any disputes, take  
12 them to Judge Hixson and he'll work through those.

13 **MS. RICHMAN:** Your Honor, we are -- may I just say  
14 one thing?

15 This is not a new issue. We've been discussing this  
16 question of whether foreign transactions are barred by the  
17 FTAIA since the summer of 2020. I believe that the current  
18 production has, you know, a significant amount of information  
19 related to this issue. I --

20 **THE COURT:** So, Ms. Richman --

21 (Simultaneous colloquy.)

22 **THE COURT:** I've not ruled on this issue. And I  
23 wasn't asking for more work. And I don't know what's been  
24 produced. So if you think that you've produced a sufficient  
25 amount, and you let Mr. Berman know, and if there's a dispute,

1 Judge Hixson can get into the nitty-gritty of it with you.

2 **MS. RICHMAN:** Thank you, Your Honor.

3 **THE COURT:** It's not intended to be full-blown. It's  
4 just intended to make sure that Mr. Berman has what he needs  
5 to file an anticipated opposition. That's all.

6 And if it's all in there, then I suspect that, you know,  
7 an amended complaint will address as much of it as it can with  
8 respect to the plausibility of any allegations that he's  
9 making with respect to the relationship. Okay?

10 It seems to me after that, then, we can set the rest of  
11 your dates once I deal with the motion to dismiss.

12 **MS. RICHMAN:** Thank you, Your Honor.

13 **THE COURT:** Okay. Anything else for today?

14 **MR. BERMAN:** Not from the plaintiffs, Your Honor.

15 **MS. RICHMAN:** Nothing here, Your Honor.

16 **THE COURT:** All right. Happy holidays, everybody.  
17 We're adjourned on your case.

18 **MR. BERMAN:** Thank you.

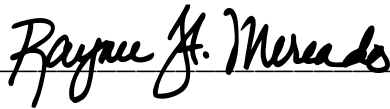
19 **MS. RICHMAN:** Thank you.

20 (Proceedings were concluded at 2:27 P.M.)

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**CERTIFICATE OF REPORTER**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

Thursday, November 17, 2022